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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,526	03/05/2001	James F. Pitzen	54525.000055	6141

21967 7590 03/21/2003

HUNTON & WILLIAMS
INTELLECTUAL PROPERTY DEPARTMENT
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WASHINGTON, DC 20006-1109

EXAMINER

MAPLES, JOHN S

ART UNIT	PAPER NUMBER
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1745

12

DATE MAILED: 03/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/954,526

Applicant(s)

PITZEN ET AL

Examiner

John S. Maples

Art Unit

1745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-79 ~~is/are~~ pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-12 and 63-70 ~~is/are~~ allowed.
- 6) ☒ Claim(s) 13, 20, 21, 28, 29, 34, 36-38, 40-43, 47, 50-57, 71-73 and 75-79 ~~is/are~~ rejected.
- 7) ☒ Claim(s) 14-19, 22-27, 30-33, 35, 39, 45-46, 48-49, 58-62, 74 ~~is/are~~ objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- ☐ Interview Summary (PTO-413) Paper No(s). _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

Art Unit: 1745

1. The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims ~~13, 20, 21, 28, 36-38, 41-43, 47, 52, 55-57, 71-73~~ are rejected under 35

U.S.C. 102(b) as being anticipated by Weber et al.-US 3,973,179. (Weber) (New Rejection)

Reference is made to Figures 2, 4 and 5 of Weber along with column 1, lines 5-16; column 2, line 37 through column 3, line 57. With regard to the shoulder mentioned in claim 20, it is noted that applicant has used the word "adapted". With this wording, the second end does not have to actually abut a shoulder but merely have the capability to do so, which feature is possible for the battery contacts in Weber. It is also noted that when the battery housing as seen in Figure 4 is rotated 90 degrees counterclockwise, then the battery contacts are located on the top of the battery housing, thus meeting the recitations of claim 21.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

Art Unit: 1745

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 29, 34, 40, 47, 50-54 and 75-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber in view of Filander-US 3,186,878. (New Rejection)

Weber teaches all of the claimed subject matter of the above noted claims except for the battery attached to an orthopedic drive assembly and for the five series connected batteries. Filander teaches in the Figures and in the corresponding text a drill which comprises an orthopedic drive assembly removably attached to a battery pack. To utilize in Weber the drive assembly of Filander would have been obvious to one of ordinary skill in this art at the time the invention was made so that the quick release battery system of Weber could be used in an orthopedic drill so that little time would be wasted when operating on an individual between battery changes. The recitation of the five series connected batteries would also have been obvious to one of ordinary skill in this art so that greater power would be realized in the tool of Weber and thus the tool could be used for a longer period of time without recharging.

7. In view of applicant's newly added claimed subject matter which constitutes additional errors being corrected by the present reissue, an additional oath or declaration is required. This additional oath or declaration must state "[T]hat every such error arose without any deceptive intention on the part of the applicant" (37 CFR 1.175(b)(1)), or language equivalent thereto.

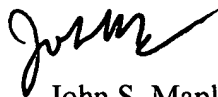
ME MPF 1414.01

Art Unit: 1745

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John S. Maples whose telephone number is 703-308-1795. The examiner can normally be reached on Monday-Thursday from 6:15-3:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 703-308-2383. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



John S. Maples
Primary Examiner
Art Unit 1745

JSM
February 13, 2003